IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9668 OF 2004

The Chairman
Shree Sadguru Vamanbaba Maharaj
Shikshan Prasarak Mandal ..Petitioner.

Vs.

Shobhana Nitin Dalvi & anr. ..Respondents.

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Mr.A.G.Kothari for the Petitioner.

Mr.N.V.Bandiwadekar for Respondent No.1.

Mr.M.V.Gopalkrishna h/f Mr.A.S.Rao for Respondent No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th April, 2005.

P.C. :

1. By the impugned order dated 8th October, 2004 the School Tribunal has set aside the order of termination of the services of the First Respondent as an Assistant Teacher and the Petitioner was directed to reinstate the First Respondent with full backwages and continuity of service.

2. The First Respondent was appointed as an

Assistant Teacher for the purposes of teaching craft. The initial appointment was on 16th February, 1995. The Petitioner sent an application for approval. The services of the First Respondent were terminated on 1st May, 2000 against which she had moved the Tribunal. The appeal filed by the First Respondent was allowed by the Tribunal on 13th September, 2002 and she was reinstated thereafter on 22nd October, 2002. On 29th October, 2002 the management submitted a letter to the Second Respondent seeking the approval to the engagement of the First Respondent. On 2nd December, 2002 the Administrative Officer of the Kalyan Dombivli Municipal Corporation School Board declined to grant approval on the ground that the First Respondent did not meet the required qualifications under Schedule B to the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981. Accordingly the services of the First Respondent were terminated on 2nd January, 2003. The order of termination, as noted earlier, was challenged before the School Tribunal and by the impugned order the termination has been set aside with consequential benefits including reinstatement, backwages and continuity of service.

3. The submission of the Petitioner before the Court is that the First Respondent was not employed in the secondary section, but in the primary section. In the circumstances, the required qualification for the First Respondent was the passing of the S.S.C. and D.Ed. in accordance with the law which has been laid down by the Full Bench of this Court. There is merit in this submission. It would appear from the impugned judgment of the Tribunal that the Tribunal has relied upon the qualifications for trained teachers in secondary schools and junior college of education. It is admitted that the Petitioner was engaged in the primary section. The Tribunal was, therefore, clearly in error in proceeding on the basis that the qualifications for secondary school teachers would stand attracted. Counsel appearing on behalf of the First Respondent, however, urged that even on the basis that the First Respondent is an untrained teacher, she should have been given the benefit of pursuing the postal D.Ed. course and that in the meantime, her services could have been protected. Reliance was sought to be placed on an order of a Division Bench of this Court in

Mansoor Ahmed Mohd. Hashim v. Chairman/ General Secretary, Yateemkhana & Madrasa. Anjuman Khairulislam (Writ Petition 2745 of 2003 decided on 27th January, 2004). It appears from the order of the Division Bench that the facility of pursuing the postal D.Ed. for in service candidates was extended by the government for the academic year 2004-05. Though this matter has been adjourned in order to enable counsel for the Petitioner and for the First Respondent to verify whether there has been any subsequent extension, the counsel have been unable to place any specific direction of the Government in that regard before the Court. In the circumstances, counsel prayed before the Court that this matter may be remanded back to the School Tribunal so as to enable the School Tribunal to determine the issues which arise before it afresh in accordance with law. Ordered accordingly. The School Tribunal shall, it is needless to state, consider whether the First Respondent will be entitled to the facility of pursuing and completing the postal D.Ed. course and whether that would be permissible in accordance with the relevant directions of the Government which hold the field. In the circumstances, the impugned order of

the School Tribunal dated 8th October, 2004 is quashed and set aside. Appeal 5 of 2003 is restored to the file of the Presiding Officer of the Additional School Tribunal, Navi Mumbai. The parties shall appear before the School Tribunal for further directions on 16th April, 2005. The Tribunal is requested to endeavour an expeditious disposal of the appeal after hearing the parties, preferably on or before 7th May, 2005.

4. All the rights and contentions of the parties are kept open.

The Petition is accordingly disposed of.